

**AMENDMENT AND RESPONSE TO OFFICE ACTION**

**Remarks**

Applicant thanks the Examiner and his supervisor for the helpful interview on May 11, 2007.

All pending claims have been cancelled and replaced by new claims 35-56.

Support for the new claims is found as follows in the published application:

Original claims and

Claim 36, par. 36, 58, 28, 88, 111, 109, and 18

Claim 37, par. 89

Claim 39, par. 37

Claim 40, par. 17

Claim 41, par. 17

Claim 42, par. 78

Claims 43, 44 par. 125

Claim 45, par. 126, 17, 23, and 124

Claim 46, par. 120

Claim 47, par. 118, 119, 21, and 120

Claim 48, par. 122

Claim 52, par. 105

Claim 53, 54, .par. 41, 44

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The new claims more clearly define the claimed seed or strand or array of seeds as having the following elements:

- a) a biocompatible carrier,
- b) one or more therapeutic components,
- c) an imaging, radiopaque, or other diagnostic marker, and
- d) one or more means to maintain location or orientation of the seed selected from

the group consisting of

one or more biodegradable structures effective to prevent migration upon implantation of the seed into a target tissue,

one or more biodegradable structures effective to maintain orientation in tissue upon implantation, and

one or more compliant setal structures which impart adhesive properties upon implantation into a target tissue,

wherein the seed has a size and shape suitable for passing through the bore of a needle or catheter having an interior diameter of less than about 2.7 mm (10 gauge).

As discussed below, although it is believed the previously pending claims did distinguish over the prior art, the new claims more clearly distinguish over the prior art cited by the examiner.

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**Rejection Under 35 U.S.C. § 102**

Claims 1-14, 16-20, and 22-35 were rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Publication No. 2001/0044567 to Zamora *et al.* (“Zamora”). This rejection is now moot in view of the cancellation of the previously pending claims.

Zamora does not disclose the subject matter of the newly presented claims. Zamora discloses a bioabsorbable brachytherapy device. There is no disclosure of polymeric setae or anchoring structures or other means of anchoring or orienting the seed. Accordingly, the newly presented claims are novel over Zamora.

**Rejection Under 35 U.S.C. § 103**

Claim 15 was rejected under 35 U.S.C. § 103(a) as obvious over Zamora, in view of U.S. Patent No. 4,247,406 to Widder *et al.* (“Widder”). This rejection is now moot in view of the cancellation of claim 15.

The newly presented claims are not obvious over Zamora alone or in combination with Widder. Widder discloses microparticles. Neither Zamora nor Widder disclose means for orienting or positioning the seeds or strands or arrays of seeds, nor teaches that there is a need to do so, or proposes structures or shapes that would inherently result in such seeds or strands or arrays of seeds.

**Double Patenting Rejection**

Claims 1-14, 16-20, 22-24, and 27-35 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 5, 10, 12, 15, 30,

U.S.S.N. 10/665,793

Filed: September 19, 2003

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32, 35, and 36 of U.S. Patent No. 6,746,661 to Kaplan ("Kaplan '661"). Claims 25 and 26 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,514,193 to Kaplan ("Kaplan '193").

These rejections are moot in view of the cancellation of all previously pending claims.

The newly presented claims are drawn to patentably distinct embodiments of seeds as compared to the subject matter of either the Kaplan '661 or Kaplan '193 patents. In particular, at a minimum the new claims require means for orienting or anchoring the seeds or strands or arrays of seeds, which is not disclosed by nor obvious over the claims in either Kaplan '661 nor Kaplan '193.

Allowance of new claims 36-55 is respectfully solicited.

Respectfully submitted,

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Date: October 31, 2007

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